

(2008) 03 DEL CK 0047
In the Delhi High Court
Case No : FAO (OS) No. 25 of 2007

Shri P. Subba Rao and Others

APPELLANT

Vs

Andhra Association (Regd.) and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 13, 226, 4

Citation : (2008) 102 DRJ 201

Hon'ble Judges : Dr. M.K. Sharma, C.J.;Reva Khetrapal, J

Bench : Division Bench

Advocate : B.B. Sawhney and M.J. Nasir, in FAOOS No. 25/2007 and B.K. Sood and Yogesh Kumar Bhatt, in FAOOS No. 26/200, for the Appellant; Jayant Bhushan Vivek Narayan Sharma and Manish Vishnoi, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—These appeals have been filed by the appellants being aggrieved by the order dated 20th December, 2006 passed by the learned Single Judge, whereby two applications filed by the appellants herein under Order XXXIX Rules 1 & 2 CPC, registered as is No. 5642/2004 in CS(OS) No. 945/2004 titled R. Damodar and Ors. v. Andhra Association, Delhi (Regd.) and Ors. and is Nos. 7848-49/2004 in CS(OS) No. 1328/2004 titled P. Subba Rao and Ors. v. Andhra Association, Delhi (Regd.) and Ors. were dismissed. As in both these appeals the appellants are challenging the common order dated 20th December, 2006 and the reliefs sought for are also similar, we dispose of these two appeals by this common judgment and order.

2. The aforesaid applications under Order XXXIX Rules 1 and 2 of the CPC for grant of interim injunction were filed in the aforesaid two suits, challenging the election process of the Andhra Association (respondent No. 1 herein). The records placed before us clearly disclose and establish that the suit of Shri R. Damodar and others was filed earlier than the suit filed by Shri P. Subba Rao and

others with an identical subject-matter. In Suit No. 945/2004 filed by Shri R. Damodar and others, the following reliefs were sought for in the injunction application being is No. 5642/2004:

a) This Hon"ble Court may be pleased to restrain defendants from carrying on and holding elections of Defendant No. 1 Association on 5.9.2004.

b) Direct the defendants to hand over the records of the Association regarding the existing and enrolled members, either by the Association itself or through Branch Secretaries/Chairman/Vice Chairman/Joint Secretaries of the various Branches to an administrator/Officer appointed by this Hon"ble Court for the purpose of scrutiny and to hold the elections, after including all the legitimate members of the Association.

3. The said application was filed on 31st August, 2004 and by filing the aforesaid application, the appellants prayed for an interim order restraining the respondents / defendants herein from carrying on and holding elections of the Andhra Association on 5th September, 2004. When the said suit was listed before the learned Single Judge, while issuing summons in the suit, notice was issued on the injunction application and the statement of the counsel appearing for the plaintiffs was also recorded to the following effect:

...Shri S.Madhusudan Babu is directed not to declare the results till further Orders of this Court. Mr.Sood further submits that the plaintiff believes that the election will not be conducted in a fair manner. He presses for the appointment of an Observer who would independently report the proceedings to this Court.

4. However, so far as the prayer restraining the holding of the election was concerned, the learned Single Judge passed a specific order holding that as the election process had already commenced, it would not be appropriate or in fact necessary to interdict the holding of the elections. The learned Single Judge also observed that serious disputes had been raised and, Therefore, the Returning Officer was directed not to disclose the results till further orders of the Court. The learned Single Judge, as it appears, accepted the prayer of the counsel appearing for the appellants / plaintiffs for appointment of an Observer and appointed a Court Observer with a direction that he should be present during the course of election. The said order was passed by the learned Single Judge on 2nd September, 2004. Consequent to the said order, election for electing the office bearers to the aforesaid Association was held as per schedule on 5th September, 2004 but the election results were not declared.

5. Thereafter, the other suit, namely, CS(OS) No. 1328/2004 was filed by Shri P. Subba Rao and others in which also an application under Order XXXIX Rules 1 and 2 of the CPC was filed. In the said application, the appellants as plaintiffs sought for the following reliefs as an interim measure:

It is Therefore respectfully prayed that this Hon"ble Court may be pleased to withhold the results of the elections conducted on 05/09/2004 pending disposal

of the suit and maintain status quo during the pendency of the suit.

6. While issuing summons in the said suit, notice was also issued on the application seeking for injunction. Since, there was already a restraint order to the effect as stated hereinbefore, although elections were held as per schedule, results were not declared. The said applications thereafter were taken up for consideration by the learned Single Judge before whom several issues appear to have been raised. The learned Single Judge took notice of all the pleas raised before her. On 7th November, 2006, after some arguments on the application is No. 5642/2004, the learned Single Judge observed that the prayer to restrain the defendants from carrying on and holding election of the defendant No. 1 Association on 5th September, 2004 would not survive as the elections had already been held under the supervision of the Observer and the results were kept in a sealed cover and were not declared, pursuant to the interim orders passed by the Court. It was also observed by the learned Single Judge that the second prayer in the application filed under Order XXXIX Rules 1 and 2 of the CPC is for appointment of an Administrator. After referring to the aforesaid prayer, the submission of the counsel for the appellants in the said suit was recorded that since fresh elections are due in the year 2007, an Administrator had to be appointed and to that extent the application would survive for consideration. The learned Single Judge observed in the order passed that the prayer for appointment of an Administrator in the application only related to the election already held. It was also observed that the prayer for appointment of an Administrator would amount to seeking a mandatory injunction, which, under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, can be granted only in a very rare situation and that if mandatory injunction was granted, the same would amount to disposing of the whole suit. The learned Single Judge also referred to the prayer for injunction in CS(OS) No. 1328/2004 and in respect of the same, it was observed that the same relates to the declaration of the result of the election already held. As it appears from the tenor of the impugned order passed, the only limited question on which the arguments were addressed before the learned Single Judge was whether the result of the election should be declared or not. The pleas raised by the counsel appearing for the parties were recorded, and thereafter the same were considered, and finally by order passed on 20th December, 2006 both the applications were dismissed and it was observed by the learned Single Judge that the result of the election should now be declared and, Therefore, it was held that the sealed cover be opened and the result be declared. Immediately thereafter, results were declared and the new office bearers of the Association took charge of their office and are continuing in office till date.

7. The appeals were filed as against the aforesaid impugned order, which were considered by us and on which we have heard the learned Counsel appearing for the parties. It may be stated herein that the appeal filed by Shri R. Damodar and others was filed on 23rd January, 2007 i.e. after the declaration of the election results and after assumption of office by the new office bearers. The issue, which

arises for our consideration in these appeals pertains to interim orders to be passed in respect of holding of election. It is established and there is no dispute with regard to the fact that elections have been held, results have been declared and the new office bearers have assumed charge. The injunction applications on the basis of which we are hearing these appeals have thus been rendered infructuous by the subsequent developments that have taken place, as noticed in the various orders passed by the learned Single Judge, at different stages. Elections having been held, results having been declared, the new office bearers having assumed charge and having begun to discharge their duties as office bearers, there is no question of passing any interim temporary injunction, either restraining the holding of elections or restraining the declaration of the results.

8. Accordingly, on a conspectus of the facts of the present appeals, we are of the opinion that the reliefs sought for in the interim applications, which are the subject matter of the present appeals, have been rendered infructuous and, Therefore, nothing survives in these appeals for consideration.

9. Even otherwise it has been held by the Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, and the Division Bench of this Court in the case of Javed Rahat and Others Vs. Bar Council of India and Others, that when the election process commences, there should not be any interference by the Courts. It is only after the election results are declared and the persons elected assume the charge of the office, that an election petition, if permitted under the rules, can be filed. If there is no provision for an election petition, then a civil suit should be filed. However, the Court should not interfere once the election process has started.

10. So far the issue with regard to appointment of an Administrator is concerned, the prayer in the application was that an Administrator be appointed for the purpose of holding the elections. There is no prayer that an Administrator should now be appointed for the management and functioning of the Association. Even if such a prayer is made, it would not be possible to pass such an order at this stage by way of an interim order, for even if such an order is passed, the same would be amount to the passing of a final order in the suit, which cannot be done. Not only this, the new office bearers, who have been elected, are not parties either before us or in the suits and in case such an order is passed, vested rights accruing to them would be taken away without there being any effective contest in the suit. It cannot also be said to be a case for issuance of mandatory injunction at this stage, for, the pre-condition for grant of such an injunction is not made out in this case. All the pleas that are raised in the applications filed under Order XXXIX Rules 1 and 2 of the CPC and also in the suits are seriously disputed by the respondents/defendants, who have filed their reply to the injunction applications and also their written statements in the main suits and, Therefore, the said pleas are required to be proved and established in accordance with law. These disputed questions of fact cannot be finally decided

at this stage, without there being proof of the pleadings in accordance with law.

11. In this connection, we may appropriately refer to the decision of the Supreme Court in *Bharat Sanchar Nigam Ltd. and Ors. v. Prem Chand Premi and Anr.* reported in (2005) 13 SCC 505. In the said decision it was held by the Supreme Court that the High Court should not have granted the ultimate relief at the interim stage as the issue seems to be a highly debatable one. In *State of Uttar Pradesh and Others Vs. Ram Sukhi Devi*, the Supreme Court again had an occasion to deal with a similar issue as to whether the Court should grant almost the final relief by way of interim measure. In that connection, in paragraph 8 of the said judgment, the Supreme Court held as follows:

...Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a *prima facie* case having been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, *State of Rajasthan and Others Vs. Swaika Properties and Another*, *State of U.P. v. Visheshwar*, *Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa*, *Shiv Shankar and Others Vs. Board of Directors, U.P.S.R.T.C. and Another*, and *Commissioner/Secretary to Government Health and Medical Edu. Deptt. Civil Sectt., Jammu Vs. Dr Ashok Kumar Kohli*, . No basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a *prima facie* case was made out though as noted above, that itself is not sufficient. We, Therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench and without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons....

12. Having considered the ratio of the aforesaid decisions of the Supreme Court, we hold that the reliefs that are sought for by the appellants in these appeals cannot be granted, inasmuch as if such prayer is granted, the same would amount to grant of final relief in the form of an interim injunction, which cannot be granted as settled by the Supreme Court. Besides, any order passed in the injunction application amounting to unsettling a settled matter and throwing out the elected members as office bearers without giving them an opportunity of hearing would not be permissible as the same would amount to affecting valuable vested rights and infringing the same without giving the said parties an opportunity of hearing. Even otherwise, there is no prayer in the appeals for appointing an Administrator to run and administer the activities and functioning and administration of the association and, Therefore, the question of appointment of such an Administrator would not arise at this stage. We may also refer to the decision of the Supreme Court in *Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others*, . In paragraphs 31, 32 and 33 of

the said judgment the Supreme Court held thus:

31. In our view no relief could have been granted to the writ petitioners on account of the fact that the newly elected office bearers of the Executive Board, who would have been affected by the decision of the writ petitions, were not impleaded as party to the writ petitions. In *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, it was observed that where in a petition for a writ of certiorari made to the High Court, only the tribunal whose order was sought to be quashed was made a party but the persons who were parties before the lower tribunal and in whose favor the impugned order was passed were not joined as parties; the writ petition was incompetent and had been rightly rejected by the High Court. In *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, it was held: (SCC p. 256)

A High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

32. In *Ishwar Singh v. Kuldip Singh*, it was held that a writ petition challenging selection and appointment to some posts without impleading the selected candidates was not maintainable. This view has been reiterated in *Arun Tewari v. Zila Mansavi Shikshak Sangh* AIR 1998 SC 331.

33. This being the settled legal position, the non-impleadment of the newly elected office bearers of the Executive Board was fatal and no relief could have been granted to the writ petitioners. The result of granting any relief in the writ petitions, as was done by the learned single Judge, was that the members of the newly elected Executive Board lost the office which they were holding without affording them an opportunity to present their case which is clearly impermissible in law. The writ petitions were liable to be dismissed on this count as well.

13. The counsel appearing for the appellants relied upon and referred to the decision of the Single Judge Bench of this Court in *Shri Sarbjit Singh and Ors. v. All India Fine Arts & Crafts Society and Ors.* reported in 1989 (2) DL 360 in support of his contention that in an appropriate case an Administrator can also be appointed by way of interim injunction order on the basis of an application filed under Order XXXIX Rules 1 and 2 of the Code of the Civil Procedure.

14. The facts of the said case cannot be equated with the facts of the present case in view of the different nature of the applications filed and different subject matter altogether. The aforesaid decisions of the Supreme Court which are relied upon by us are clear and unambiguous and, Therefore, the said ratio of the decisions of the Supreme Court would squarely apply and govern the matter in hand.

15. We may also refer to the decision of the Supreme Court in *Deoraj Vs. State of Maharashtra and Others*, . In paragraph 12 of the said judgment, the Supreme Court stated as follows:

Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favor. In such cases the availability of a very strong prima facie case -- of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favor of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.

16. In the said judgment, the Supreme Court has cautioned that the power to grant any interim injunction by way of granting a final relief should be rarely exercised in rare and exceptional cases, and the Court should grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing.

17. In the present case although debatable issues have been raised. It cannot be said that the balance of convenience is in favor of the appellants and that they would suffer irreparable injury if the prayer made in the appeals is not granted. In fact, due to the changed circumstances and subsequent events, reliefs as sought for cannot be granted as all the interim reliefs sought for and extracted above have been rendered infructuous. The suits will now have to be contested, the evidence will have to be led to prove and establish the pleadings of the parties, and only thereafter the issues raised could be decided. The said issues are being fully contested by filing replies and also written statements.

18. Several issues have also been raised and argued before us by the counsel appearing for the appellants in order to show that the preparation of the electoral rolls, the rejection of the nomination papers and, in fact, the entire process of election was vitiated. It was contended on behalf of the appellants that the respondents did not make available the complete voters list for rectification on the 12th, 13th and 14th of August, 2004. It was further submitted that complete

voters list was not made available for sale on 21st August, 2004, and thereby the entire election process is vitiated. The entire electoral roll, which was prepared, was also vitiated as the names of 500 life members were left out and many ghost members were included in the voters list. It was also submitted that altogether about 6000 members, who were required to be included in the voters list, were not included.

19. Mr.B.B. Sawhney, Sr. Advocate, appearing on behalf of the appellants ? Shri P. Subba Rao and others, also took up three issues contending, inter alia, that there was wrongful exclusion of as many as 6140 members from the voters list, as the applications were received by the Branch Secretaries, who after completion of all formalities, wrongly did not include the names of the applicants in the voters list. He has also submitted that there was a denial of right of scrutiny and rectification of the voters list, which had adversely affected the result of the elections. His submission was that the opportunity for scrutiny and rectification of the voters list was negated and that the names of 530 pre-existing life members did not appear in the voters list. It was also submitted that the entire election proceeded on the basis of plurality of lists. First the ?latest voters list? of 5773 new members, then incomplete consolidated voters list, followed by supplementary list. It was also submitted that there was no finding given by the learned Single Judge on the several issues raised by the appellants in this regard.

20. All the aforesaid submissions have been countered by the respondents in their replies and the written statements filed since they relate to the issues raised in the suits. Since these are disputed facts, specific issues shall have to be framed and evidence led to establish the allegations. Only thereafter the same could be adjudicated upon and decided in accordance with law, effectively. It would not be possible to express any opinion at this stage in respect of the issues, for no evidence is led on the aforesaid issues and the applications filed under Order XXXIX Rules 1 and 2 of the CPC have been decided only on the basis of the affidavits filed by the parties. The respondents have effectively contested all the aforesaid pleas in their counter affidavits and also before us by making reference to the various statements made therein in respect of the issue regarding names of 6140 persons, who had applied for new membership, but were not included in the final voters list. In respect of the same it was stated that the aforesaid statement is based on the belief that the Branch Secretaries had power to enroll members under Article 13(b) of the Constitution of the Association. This was refuted on the ground that a bare perusal of Articles 4 and 13(b) would reveal that only the General Secretary of the Association has been conferred the power to admit members in the Association. It is also pointed out that the said issue was also raised in Civil Suit No. 339/2004 filed before the Civil Judge, Tis Hazari by some of the Branch Secretaries of the Association, alleging that the names of 6140 persons newly enrolled by them were not included in the voters list by the respondent No. 2, on the ground that their completed application forms were not received in the Head Office of the Association by the

cut off date i.e. 24th July, 2004. In the said case, the case of the plaintiffs was that they had received the application forms and the membership subscription forms of the 6140 interested persons on or before 24th July, 2004 and that, Therefore, the enrolment of these 6140 persons was in fact complete as soon as the Branch Secretaries received the forms. It is thus established there from that the said plea is again being raised in these suits and before us in these appeals. In this connection, we may also state that the Civil Judge, while disposing of the applications under Order XXXIX Rules 1 and 2 of the CPC recorded that the application forms were forwarded by the plaintiffs to the Association after a delay of a couple of days and in that view of the matter, the trial Judge issued a direction that the names of these persons be incorporated in the voters list. An appeal was filed as against the said order of the learned Civil Judge, who had virtually granted the final relief to the plaintiffs, and the same was set aside by the appellate court, upholding the non-inclusion of 6140 persons' names in the voters list. It is also brought to our notice that CM(M) No. 1278/2004 arising out of the above mentioned appeal was dismissed by the High Court. The aforesaid suit No. 339/2004 is still pending consideration. Another plea that is taken while refuting the aforesaid submission on behalf of the respondents is that no vested right accrues in favor of a person to be enrolled as a voter in the voters list by mere issuance of receipt of subscription by the Branch secretary. An applicant is required to deposit the subscription amount along with the application for enrolment and, if on scrutiny of the application, it is found that the person fulfills all the criteria laid down under Article 4 of the Constitution of the Association, it is then that he can be enrolled as a member by the General Secretary.

21. Therefore, whatever is stated hereinbefore would clearly establish that all the issues, which are raised, have been refuted, and there is answer given to each of the aforesaid allegations. All these issues would be required to be considered only when the pleadings in the suit are proved by leading cogent and reliable evidence, and an opportunity is granted to all the interested parties to lead their evidence in rebuttal. This is not the stage when we can answer any of the aforesaid issues, which, according to us, are debatable and arguable issues. We do not intend to pronounce on these issues at this stage, for we would like to give parties an opportunity of proving / disproving the said allegations in accordance with law, and clearly this is not the stage when we can effectively decide the said issues. At this stage, there is also no question of destabilising the status of the elected members, who are functioning as of today, merely because such allegations have been made.

22. Considering the entire facts and circumstances of the case, we are of the considered opinion that these appeals are required to be dismissed in view of the observations made hereinbefore. Both the appeals are accordingly dismissed. In the light of the facts and circumstances of the case and the allegations made, however, we feel that the hearing of the suits should be expedited. The counsel appearing for the respondents also accepted the aforesaid position and themselves stated that the hearing of the suits was required to be expedited and

that they had no objection to the same. In this view of the matter, we direct that if possible, the evidence be recorded on a day-to-day basis, as far as practicable, and thereafter arguments be heard as expeditiously as possible.

23. It is made clear that the observations made hereinabove on the merits are only for the purpose of deciding the present appeals and will have no impact on the final decision of the suits.

24. The parties shall now appear before the learned Single Judge on 7th April, 2008 for obtaining further dates in the two suits.